

FEDERAL COURT OF AUSTRALIA

Staatz v Berry, in the matter of Wollumbin Horizons Pty Ltd (in liq) [2018] FCA

1090

File number(s): QUD 32 of 2018

Judge(s): **DERRINGTON J**

Date of judgment: 11 July 2018

Catchwords: **PRACTICE AND PROCEDURE** – leave to file cross-claim and application for stay of liquidator’s action – liquidator’s proceeding already set down for hearing – proposed application unnecessary and would interfere with the orderly administration of the winding up – untenable claims agitated in cross-claim – order that cross-claim be struck out

Legislation: *Corporations Act 2001* (Cth)
Federal Court of Australia Act 1976 (Cth)
Federal Court Rules 2011 (Cth)
Trustee Act 1925 (NSW)

Cases cited: *Seaman v Silvia* [2018] FCA 97

Date of hearing: 11 July 2018

Registry: Queensland

Division: General Division

National Practice Area: Commercial and Corporations

Sub-area: Corporations and Corporate Insolvency

Category: Catchwords

Number of paragraphs: 50

Counsel for the Plaintiff: Mr C Jennings

Solicitor for the Plaintiff: Patane Lawyers

Counsel for the First Defendant: The First Defendant appeared in person

Counsel for the Second Defendant:

The Second Defendant appeared in person

Counsel for the Eighth Defendant:

The Eighth Defendant appeared in person via telephone

Solicitor for the Proposed Cross-Respondents:

Mr W Fitzgerald of Rose Litigation Lawyers

Counsel for the Proposed Fourth Cross-Claimant:

The proposed Fourth Cross-Claimant appeared in person

Counsel for the Proposed Sixteenth Cross-Claimant:

The proposed Sixteenth Cross-Claimant appeared in person

ORDERS

QUD 32 of 2018

**IN THE MATTER OF WOLLUMBIN HORIZONS PTY LTD (IN LIQUIDATION)
ACN 606 581 364**

BETWEEN: **STEVEN NEVILLE STAATZ AS LIQUIDATOR OF
WOLLUMBIN HORIZONS PTY LTD (IN LIQUIDATION)
ACN 606 581 364**
Plaintiff

AND: **RON BERRY**
First Defendant

GILLIAN NORMAN
Second Defendant

EMANUELE AGUS (and others named in the Schedule)
Third Defendant

JUDGE: **DERRINGTON J**

DATE OF ORDER: **11 JULY 2018**

THE COURT ORDERS THAT:

1. The interlocutory process filed on 18 May 2018 is dismissed.
2. The notice of cross-claim filed on 18 May 2018 is struck out.
3. The Second Defendant's:
 - (a) notice of cross-claim filed on 18 May 2018;
 - (b) interlocutory process filed on 18 May 2018;
 - (c) affidavit filed on 23 May 2018;
 - (d) outline of submission filed on 2 July 2018; and
 - (e) outline of submission filed on 10 July 2018,are to be marked as "suppressed" on the Federal Court Electronic File and are not to be accessed other than by leave of the Court.
4. The Plaintiff is to cause notice to be given to each of the persons named as a cross-claimant in the Second Defendant's notice of cross-claim, by sending to each of them

by email, or where an email address is not known to the Plaintiff, by post to their respective last known residential address, a letter from the plaintiff's solicitors summarising:

- (a) the outcome of the interlocutory application filed on 18 May 2018;
- (b) that each such person has a right to be heard on the relief sought by the plaintiff on the originating process filed on 1 February 2018, and that each of those persons may be bound by final orders made in this proceeding; and
- (c) that if any such person seeks to be heard on the relief sought by the Plaintiff in this proceeding, they should seek to be joined as a defendant to this proceeding.

5. The Second Defendant is to pay the Plaintiff's costs of and incidental to the interlocutory process filed on 18 May 2018 in this proceeding, and to the extent that such costs are not recovered by the Plaintiff from the Second Defendant, such costs be the Plaintiff's costs in the winding up of Wollumbin Horizons Pty Ltd (In Liquidation).
6. The Plaintiff have leave to apply to the Court at any time for an order that the costs in order 5 above be paid from amounts (if any) payable to the Second Defendant in the winding up of Wollumbin Horizons Pty Ltd (In Liquidation).

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

DERRINGTON J:

Introduction

- 1 Mr Steven Neville Staatz in his capacity as the liquidator of Wollumbin Horizons Pty Ltd (in liq) (Wollumbin) has issued out of this Court an Originating Application seeking relief pursuant to s 45-1 or s 90-15 of Schedule 2 of the *Corporations Act 2001* (Cth) and under ss 63 and 93 of the *Trustee Act 1925* (NSW).
- 2 The purpose of the provisions in Schedule 2 of the *Corporations Act* is to provide to liquidators a quick and efficacious method of resolving difficult questions arising in the course of a winding up. In this case the substance of the liquidator's application is for orders determining a number of issues as to the proprietary rights in certain land situated at Kyogle in New South Wales. Wollumbin is the registered proprietor of that land although it was paid for through the subscription of funds from a number persons. The liquidator is aware that a number of those subscribers have asserted that they are entitled to a proprietary interest in the land in some form or another. Indeed, at one time a deed of trust was executed or, at least, prepared in relation to it although that specific instrument remained somewhat incomplete and it does not appear that its terms were fully carried out. Whether any trust instrument was validly executed is an issue which needs to be determined in the liquidator's proceedings.
- 3 The liquidator seeks to ascertain the nature of the rights of the various subscribers and the concomitant rights of the company. He also seeks orders as to whether Wollumbin has any right as trustee to be indemnified out of the assets of the trust for debts incurred prior to the date on which the administrators were appointed. He further seeks a declaration as to his entitlement to a lien on the assets of the trust in respect of the fees, expenses and outlays incurred in the course of the administration and other machinery and ancillary orders are sought. As the application necessarily involves the determination of the rights of the subscribers to the land held by Wollumbin, orders have been previously made that the liquidator notify each of those persons of the making of this application. A consequence was that a number of subscribers have applied to be made defendants to the proceedings and those applications have been acceded to. Some of those persons have filed concise statements in which they assert a beneficial ownership of the land in proportion to their contributions to the

purchase money. A number of them have also filed affidavits in support of their position. That matter is presently set down for a hearing on 17 to 20 September this year.

4 On 29 May 2018 Ms Gillian Linda Norman (Ms Norman) filed a document called a Notice of Cross-Claim. She also filed with it an Interlocutory Application which seeks orders that persons referred to as cross-claimants be joined as such to the proceedings and other similar relief. So far as can be ascertained, the essence of the application today is for orders that Ms Norman have leave to commence a cross-claim against the liquidator and to join 15 other persons as cross-claimants. The cross-respondents to the proposed action are said to be the liquidator and persons who are or were involved in the scheme through which the land was acquired, being Mr Adrian Brennock, Mr Mark Darwin and Mr Phillip Dixon. The Notice of Cross-Claim also seeks, amongst other things, orders for a stay of the winding-up of Wollumbin pending the determination of a cross-claim, and a stay of the liquidator's application under s 90-15 of Schedule 2 of the *Corporations Act*.

5 Leave is sought to bring proceedings against the liquidator. The exact grounds on which leave is sought is somewhat unparticularised and to some degree confused. A claim is made that the land was acquired by Wollumbin by fraud, although the exact fraud by which Wollumbin acquired the land is not clearly identified. An alternative claim is made that the proceedings be cross-vested to the New South Wales Supreme Court. The only identified rationale for that part of the application is that Ms Norman is presently a defendant in defamation proceedings in that Court. The plaintiffs in that defamation proceedings are the proposed third and fourth cross-respondents.

6 Alternative relief seems to be founded on some assertion that Ms Norman brings the application for leave to file the cross-claim as a representative party in a class action pursuant to s 4A of the *Federal Court of Australia Act*.

The nature of the hearing today

7 As mentioned the application by the liquidator has been set down for hearing on Monday, 17 September 2018 for four days. Directions have been made for the filing of evidence by liquidators and by all persons having an interest in the application. Ms Norman's application has been brought on urgently, as if it is allowed, it will necessarily derail the liquidator's application. The allowing of the application must necessarily impact upon the determination of the liquidator's application not only because Ms Norman seeks to stay those proceedings,

but because she seeks to mount a wide-ranging action against a variety of persons including the liquidator and she asks that this be determined before the winding up continues.

8 If the relief sought by Ms Norman is allowed the determination of the rights of the subscribers in the land is likely to be deferred for a period of between 18 months to two years. Not only that, the claims which she seeks to agitate against the liquidators will have to be defended and they will incur substantial costs which, because they will have been incurred in their capacity as the liquidator, will be costs which they are entitled to recover in the liquidation. That may - I do not say "must" - have the result that the amount of money available to meet the subscribers' claims would be substantially reduced.

9 Nevertheless, as can be ascertained from the facts as they have been briefly identified, the substantive relief sought by Ms Norman in respect of the land owned by Wollumbin overlaps precisely with some of the issues which the liquidator seeks to have determined. He seeks orders as to the beneficial entitlements to the land and how it might be dealt with. This necessarily requires consideration of the legal entitlements to the beneficial interests in the land, and it is to be observed that a number of the proposed cross claimants in Ms Norman's proposed action have filed affidavits in the liquidator's proceeding in which they seek to propound their entitlement to and beneficial interest in it.

Background

10 Wollumbin is now the registered owner of real property situated at 3222 Kyogle Road, Mount Burrell in New South Wales. It acquired that property in mid-2015, and the source of the funds used for its acquisition were twofold. First, proceeds were received from numerous persons who had been induced to subscribe to a scheme for the acquisition of the land on which it was proposed that a community village would ultimately be constructed. The subscribers were apparently informed that they would eventually be entitled to erect residences on the land and live there in some form of communal living arrangement. There is also some evidence to suggest that the subscribers were told that they would have some ownership rights in the land.

11 The second source of funds was a loan provided by Adelaide Investments (Australia) Pty Ltd. That loan was subsequently repaid using funds obtained from subsequent subscribers. The land is now generally unencumbered, save that one of the subscribers has lodged a caveat over it in respect of their claimed interest. A difficult feature which will, no doubt, have to be dealt with in time, is that subsequent to the land being acquired, additional subscribers paid

money on the same promises. As the land had been fully paid for, it is not clear what that money was used for although allegations are made that it was misappropriated. Whether that is true or not is yet to be determined, however, for present purposes it is appropriate to note that there are, in fact, more subscribers in value than was the purchase price of the land. This may give rise to disputes between various of the subscribers in relation to which of them have priority or which of them have any claim at all with respect to the land.

12 For present purposes, it appears that Wollumbin purported to act as trustee of the land and, indeed, as I mentioned, a trust deed was prepared. The trust deed identified the trust as the Bhula Bhula Community Village Trust and the document is apparently dated 23 June 2015. That deed purported to create a unit trust, although, as the liquidator identifies, the issuing of units apparently did not proceed. At least, it did not proceed according to the requirements of the trust deed. Despite promotional material indicating otherwise, no further activity has occurred in relation to the establishment of the unit trust.

13 Mr Staatz was appointed as the administrator of the company under section 436A of the *Corporations Act* on 4 July 2017. On the convening of the second meeting of creditors it was resolved that the company be wound up and that Mr Staatz be appointed as liquidator. The land is the only significant asset of the company which has been identified to date. On 1 February 2018, the liquidator filed the originating process seeking the orders to which I have referred, and, as I mentioned, the substance of that application is for orders concerning the identity of the persons who are entitled to an interest in the land presently held by Wollumbin.

14 Orders have been made in these proceedings to notify all persons who might be interested in the liquidator's application and it appears that such persons have been so notified. I am satisfied that, at present, all relevant interested persons have been served. A number of subscribers have appeared and have sought to be made respondents to the action. A number have filed concise statements which has helped to crystallise the issues for dispute, and some have filed affidavits identifying the circumstances of their subscription to the scheme.

15 On 26 March 2018, an order was made that, subject to further order, the issues to be determined at the hearing of the liquidator's proceeding should be whether the liquidator was entitled to the relief sought and whether the parties joined as respondents were entitled to relief, which was to the effect that the land was held on a resulting or constructive trust in

their favour. Mr Jennings, on behalf of the liquidator, has identified that in the context of the orders made, the central issues for determination in the principal proceedings are:

- (a) The nature of the trust attaching to the company's ownership of the land, if any;
- (b) Whether the plaintiff would be justified in proceeding to market the land for sale and selling it, and whether for that purpose the liquidator should be appointed receiver over the land; and
- (c) Whether the company holds a lien or other right against the land as property held on trust to secure payment of its liabilities, including those incurred in the winding up.

The attitude of the liquidator

16 The liquidator opposes the orders sought by Ms Norman and does so on a number of grounds.

Ms Norman's claim for interlocutory relief

Claim against the plaintiff

17 Ms Norman did not appear on the hearing of her application. She had sent correspondence to the Court to the effect that she relied on the material filed including her written submissions and that she did not wish to appear in person.

18 In support of her application, Ms Norman has sworn a lengthy affidavit. Unfortunately, much of the content is argumentative and repetitive. Very little of it is in admissible form, although I was prepared to receive it in substance. That said, I cannot take at face value mere allegations or assertions where they have been made. However that may be, substantial proportions of the affidavit are directed towards the question of the acquisition of the land by Wollumbin and the inducements made by directors of Wollumbin to encourage subscribers to part with their money.

19 In general terms, the evidence Ms Norman seeks to adduce is that the subscribers were told that the property would be acquired and held on trust. It seems that it was always envisaged that Wollumbin or a company associated with it would acquire the land. It was also apparently envisaged that the entire shareholding in Wollumbin would be transferred to an incorporated association which consisted of community members. In that way, those community members would have control of the trust company which legally owned the land.

It was also said that the subscribers were told that they would have ownership in the land. Had the scheme as represented been implemented at least, in the manner that Ms Norman has described it, it would seem that the subscribers would indeed have had a beneficial interest in the land as beneficiaries of a trust.

20 Many of the other allegations in Ms Norman's affidavit concern alleged misconduct by the directors of Wollumbin and, in particular, that they engaged in misleading or deceptive conduct.

Ms Norman's claims against the liquidator

21 In her written submissions and in her affidavit, Ms Norman also makes a number of unsubstantiated allegations against the liquidator. They fall into the following categories:

- (a) challenges against the validity of the liquidator's appointment;
- (b) alleged criminal conduct contrary to the *Corporations Act*;
- (c) alleged professional misconduct which includes an allegation of conflict of interest; and,
- (d) alleged breaches of fiduciary duty.

22 On this application I am required to ascertain whether or not I ought allow the derailing of the principal proceedings to work out the interests of the subscribers, so as to allow Ms Norman an opportunity to commence wide-ranging and broad action against a variety of people including the liquidator. It may be that technically Ms Norman does not require the leave to issue a cross-claim. However that may be, this matter has been case-managed for some time and has been set down for a hearing. It is well within the powers of this court pursuant to section 23 of the *Federal Court of Australia Act* to manage cases in a way which allows a result and conclusion to be reached in a cheap, efficient and efficacious manner.

23 That said, and even though leave is probably not required, I am prepared to apply the principles which would be applied on an application for leave in order to ascertain whether, on balance, I ought to allow the present proceedings to interrupt liquidator's action.

24 The first issue I take into account is that as a matter of general law liquidators should not be vexed by a multiplicity of proceedings which will distract them from the statutory obligations which they are obliged to perform. The provisions of the *Corporations Act* identify that to be so.

25 I should also take into account that there should be some good reason why I should depart from that ordinary process by which liquidator's claims are determined. In doing so, it is necessary to consider the seriousness of the claims that are made, the complexity of the legal and factual issues and the stage of the proceedings to the extent to which they have already been reached. I would agree with the liquidator's submission that the onus necessarily falls on Ms Norman to establish that these matters weigh in favour of giving leave or allowing the proceedings to continue. I will turn now briefly to some of the issues raised by Ms Norman for the purposes of answering that question.

Validity of appointment

26 Although not based on any substantive evidence, Ms Norman says that the company Wollumbin was solvent when the plaintiff was appointed as administrator. She also makes an allegation that his appointment was a consequence of a "skewed vote" at the second meeting of creditors where the contingent creditors were admitted with debts of between nil and one dollar. The liquidator in response to these assertions has adduced substantial evidence in his affidavit. None of that evidence has been challenged and nor was it opposed. It shows that at 4 July 2017, being the date of his appointment, Wollumbin was insolvent or likely to be insolvent. A significant factor in that conclusion is that as at April 2017 Wollumbin had failed to comply with a statutory demand issued against it by Ms Norman. Although the demand was reduced to \$115,840 it was not set aside and the non-payment of the demand necessarily deemed the company to be insolvent for the purposes of any winding-up application under the *Corporations Act*. It is difficult to think of a more obvious indicia of insolvency than the non-payment of the statutory demand.

27 Moreover, Wollumbin had no source of income. It apparently did not carry on any business other than possibly holding the land and there is no evidence that it was paid to do that and, therefore, had any income stream from which it might pay debts. The exact mechanism by which debts which would accrue to the land by reason of its occupation by the various subscribers would be met has not been disclosed. There was a suggestion that the company's only possible source of income was to receive contributions from more subscribers. That is, of course, possible but it's apparent that there was insufficient moneys coming in to meet the debts that were payable.

28 The liquidator's material also shows that Wollumbin had a liability to pay an order for costs in favour of the Tweed Shire Council in respect of a Land and Environment Court action.

That order was made in about April 2017 and the company had no sources of income from which to meet it. Whilst it may have been the case that the company was asset-rich, that is not necessarily so given the existence of the asserted trust. I say that because there is no indication that the trustee had any authority or power to mortgage the trust property. It was suggested today that the land might be mortgaged but, given the complexity of the arrangements as to the ownership of the land, one might have thought that any financier would have been greatly concerned about advancing money on the faith of any mortgage.

29 The company was obviously cash flow insolvent at the date of Mr Staatz' appointment. There is no substance in Ms Norman's allegation that the company was not insolvent or not likely to have been insolvent at that time.

30 As to the allegation that Mr Staatz was appointed as the liquidator through a "skewed vote", it is clear that Ms Norman has misunderstood what has occurred at the second meeting of creditors. As appears from the minutes of that meeting, many of the proofs of debt of the persons present were admitted for their full value for voting purposes. Mr Jennings for the liquidator has identified that not all proofs of debt were admitted or admitted in full but this only shows that the liquidator went through the usual and proper process of considering the proofs which were given to him. I was told today that Mr Berry, who supports Ms Norman's application, lodged a proof of debt for the purposes of that meeting and for the purposes of voting and it was accepted. He now says that it should not have been. Such matters can only be dealt with by administrators on the basis of the information then available to them. Things may change and often do, but all that is required is that the administrators act reasonably in considering the proofs that are proffered. In any event, a vote was taken after the proofs were allowed or disallowed or allowed in part.

31 The motion at the second meeting that the company be wound up was passed by 10 votes to 3 and in this respect I accept the liquidator's submission that Ms Norman has misunderstood or conflated the events which occurred at the first and second meeting of creditors. One might also mention that it is not irrelevant in these circumstances that no party has sought to appeal the decision of the administrator to reject or allow proofs of debt for the purposes of voting at either of the meetings. It is also noted that the second meeting of creditors was held on 8 August 2017 and there is no explanation as to the delay by Ms Norman in seeking orders in relation to the validity of the liquidator's appointment since that time. That is an extraordinarily long delay in seeking to upset the appointment of a liquidator.

- 32 The consequence of upsetting the appointment of a liquidator at this point in time would necessarily result in the waste of many tens of thousands of dollars' worth of work. That is a matter which, no doubt, would be taken into account were Ms Norman's action to be successful. In any event, there's no substance in the suggestion that the liquidator was invalidly appointed.
- 33 Ms Norman makes numerous unparticularised allegations that the liquidator has engaged in certain criminal conduct contrary to the *Corporations Act*, however, not a skerrick of evidence has been adduced in support of them. The making of these allegations is a serious misuse of the Court's process. On the material available on this application there is no substance in them.
- 34 In any event, as the liquidator rightly identifies, the creditors of the company do not have the standing to commence proceedings for alleged criminal conduct committed under the *Corporations Act*.

Professional misconduct

- 35 Ms Norman's allegations of professional misconduct by the liquidator are also unfounded. They fall into two categories. First, that the liquidator was somehow engaged in putting in place arrangements to strip assets of Wollumbin and, secondly that the liquidator's firm has a conflict of interest in undertaking the liquidator.
- 36 As to the first matter, prior to the plaintiff's appointment as the administrator the company had entered into a contract to sell the land to a company Mount Warning Eco Village Pty Ltd. That company seems to be associated with the erstwhile directors of Wollumbin. An associated agreement effectively providing vendor finance was either entered into or contemplated. That contract for the sale has not been proceeded with and the deposit owing under it was not paid. The liquidator has indicated that he will not proceed with the agreement, disclaim it or affirm it or otherwise market the land for sale until these proceedings have been determined. In that respect, the liquidator has taken the appropriately prudent course in relation to that contract of sale, and on the material which is available, there is nothing nefarious about his actions.
- 37 Ms Norman also says the liquidator had a conflict of interest because his firm had somehow been engaged by Mr Brennock who was associated with Wollumbin. It is also alleged that the liquidator's firm, Vincents, had a relationship with other companies associated with Mr

Brennock. On the material available, those allegations are misguided and untrue. The liquidator has adduced evidence that neither Mr Brennock nor any of his companies have been clients of the firm Vincents. Importantly, Ms Norman did not seek to contest the liquidator's evidence on this point or attempt to contradict it in any way and I must, necessarily, accept it. That follows there is no substance in the allegation that the liquidator had a conflict of interest.

Alleged breaches of fiduciary duty

38 Ms Norman makes numerous allegations against the liquidator which are said to amount to breaches of fiduciary duty. The substance of the allegations is difficult to ascertain. Importantly, Ms Norman has not sought to adduce any evidence of these matters. The vague allegation is that the liquidator had some involvement in the removal of the mobile home from the land which Ms Norman claims she owns. That circumstance is fully explained by the liquidator in his affidavit of 27 June 2018 at paragraphs 100 to 105. His evidence completely exonerates him in this respect. Again, Ms Norman did not seek to challenge that evidence in any way. It was suggested this morning from the Bar table that, somehow, the administrator had some responsibility for the property of third parties on land under his administration. There is no authority to that effect. Indeed, a person whose property does remain on the property of a company in administration ought to take appropriate steps to recover it. It is not up to an administrator to seek to deal with assets of third parties. Indeed, it may well be improper for him to do so.

39 The liquidator also rightly points out that an external administrator of a company does not owe fiduciary duties to creditors, and I accept this is so; *Seaman v Silvia* [2018] FCA 97, [35].

40 In the result, there is no substance in Ms Norman's allegations in this respect.

41 It follows that the claims against the liquidator have no chance of success and should not be allowed to be pursued. There is no substance in them and they have obviously been raised for the purposes of vexing the liquidator.

Claims against other persons

42 Ms Norman and, it appears, the other proposed cross-claimants apparently seek to agitate claims for damages against other persons who were formally directors of Wollumbin. The substance of those claims appear to be that they were misled into parting with their money as

subscribers. The gravamen of the complaint is that they were given information as to the future structure of the trust of the community land and that these things did not come to pass. They seek orders for compensation, damages and cost. However, the application before the Court which is brought by the liquidator for the purposes of ascertaining the interests in the land should not be complicated by the bringing of such claims against these parties.

43 It is recognised that, to some extent, the allegations they make are connected with the questions the liquidator wishes to have determined. However, it does not follow that those matters must necessarily be litigated in the same proceedings. As I have indicated, the pursuit of the proceedings against the former directors of Wollumbin will delay the liquidator's action for some time. Any such claims will remain, subject to any limitation period, and can be pursued subsequently and/or separately. Indeed, it is very likely that liquidator's proceeding will crystallise the subscriber's rights to some extent.

Conclusion on whether leave ought be granted

44 It follows from these conclusions as to the lack of any demonstrable substance in the proposed cross-claim that I ought order under s 23 of the *Federal Court of Australia Act* that it be struck out.

45 To the extent to which the proposed application seeks to advance issues which are alive in the liquidator's proceeding, there is nothing which inhibits the proposed cross-claimants from participating in that action. Indeed, Ms Norman has herself become a defendant in those proceedings and is able to agitate her claims for a proprietary interest in the land in that matter. If the other proposed cross-claimants are desirous of becoming defendants in that proceeding, they may seek leave to be so joined. Even if the claims advanced by the proposed cross-claimants against the liquidator or other persons had any substance, they would, necessarily, involve a substantial widening of the liquidator's proceeding leading to substantial delay in the resolution of important issues in liquidation. That would prejudice the principal proceedings and it would also prejudice the interest of the other subscribers who are seeking the return of their money in one form or another.

46 For these reasons, I am prepared to direct the cross-application be struck out as the liquidator has sought. He also seeks orders that it be removed from the court file pursuant to r 16.21 of the *Federal Court Rules* or s 23 of the *Federal Court of Australia Act*. I agree with the substance of that submission. For the reasons which I have indicated above, the proposed cross-claim is unnecessary. Moreover, the unsubstantiated and unparticularised allegation

against the plaintiff are both vexatious and scandalous and they ought not be entitled to stand as a public record.

47 The appropriate order is, however, not that the documents be removed from the Court file, but that the documents, being Ms Norman's cross-claim filed 29 May 2018 for interlocutory application to join the parties to the main proceedings, her affidavit of 24 May 2018, her submissions of 3 July 2018 and her further submissions filed 10 July 2018 marked as "suppressed" on the Federal Court Electronic File and it be ordered that they are not to be accessed other than by leave of the Court.

Joinder of further parties

48 It is appropriate to deal separately with Ms Norman's application to join various parties to the proceedings, although, she has sought to join them as cross-claimants. That application is unnecessary and a waste of time and cost. Orders have been made in these proceedings with respect to the notification of the liquidator's action to the parties with an interest in it.

49 Counsel for the liquidator has confirmed that all parties who can be located have been notified. This includes those persons whom Ms Norman seeks to join as cross-claimants. It is not clear why those persons have not availed themselves of the opportunity to become a party to the liquidator's action. It may be that they have been cajoled into believing that they ought to take action against third parties as advised by Ms Norman. Whatever the reason does not matter. Given the basis of the application to join the parties to the action was such they might advance claims against other parties, rather than agitate their interests in relation to the ownership of the land, that joinder should be refused. The reasons which I have indicated above are equally applicable here. Such joinder will merely create delay and inconvenience and an increase in costs.

50 In the latest set of written submissions filed by Ms Norman, albeit without leave, it is also alleged that all but two of the proposed cross-claimants indicated their assent to be joined. That being so, I propose to direct the liquidator write to each of the proposed cross-claimants who are not already parties to the liquidator's proceeding and advise them of the outcome of this application and, again, refer to them the opportunity to be heard on the liquidator's applications. Such persons ought to be informed that given that they were served with the proceedings or otherwise given notice of it, they will be bound by the outcome regardless of whether or not they appear. They should be invited to become defendants to the liquidator's action. So subject to that order:

1. The interlocutory application is refused.
2. The notice of cross-claim be struck out.

I certify that the preceding fifty (50) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Derrington.

Associate:

Dated: 11 July 2018

SCHEDULE OF PARTIES

QUD 32 of 2018

Defendants

Fourth Defendant:	MELISSA HIRSCH
Fifth Defendant:	STUART NEWMAN
Sixth Defendant:	NORMA GEELIN MOU
Seventh Defendant:	PHILLIP MORANDINI
Eighth Defendant:	DEAN MOONEY
Ninth Defendant:	CRAIG SCOTT